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EXAMINER

DESHPANDE, KALYAN K

ART UNIT PAPER NUMBER

3623

DATE MAILED: 02/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/035,731	Applicant(s) GAMAGE ET AL.	
	Examiner Kalyan K. Deshpande	Art Unit 3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Introduction

1. The following is a non-final office action in response to the communications received on December 26, 2001. Claims 1-27 are now pending in this application.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 108, 1101, and 1200. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 13-27 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claimed invention is required to produce a

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useful, concrete, and tangible real-world result. An invention that fails to produce a tangible result is one that involves no more than the manipulation of an abstract idea. See *State Street Bank & Trust Co. v. Signature Financial Group Inc.*, 149 F. 3d 1368, 47 USPQ2d 1596 (Fed. Cir. 1998). In order to be concrete the result must be substantially repeatable or the process must substantially produce the same result again.

Claims 13, 19, and 24 merely recite the manipulation of an abstract idea and do not produce a concrete result. Claims 13, 19, and 24 recite “determining opportunity gaps”, which is a mere abstract idea that does not produce real-world results. The step of “determining opportunity gaps” is based on subjective standards. The results of this step will not produce concrete real-world results since there is no evidence that this step, when repeated, will produce substantially the same result. This step is based on a subjective standard and will produce different results for each individual performing the step. Because the results produced by the method are not tangible and concrete, claims 13, 19, and 24 are considered to be directed toward non-statutory subject matter.

Claims 14-18, 20-23, and 25-27 do not remedy the tangible and concrete results issues of independent claims 13, 19, and 24; therefore are rejected for the same reasons.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arganbright et al. (U.S. Patent No. 6980962).

As per claim 1, Arganbright teaches:

A computer-based method for determining a product mix for a retail store, including the steps of:

establishing a market segment (see column 10 lines 54-65; where the system teaches of gaining a greater share of product markets and identifying new markets to enter in to.);

generating a list of suggested product mix as a function of the market segment, the market cutoff rate and a sales information database having information related to sales of product as a function of time (see column 32 lines 20-34 and column 55 lines 22-31; where product mixes are determined for different groups (market segments) and sales information which includes the market cut off rate.

Furthermore, a report is generated for recommended products. This report is the same as generating a product mix list. The sales information will contain information on which products the IBO has been more successful in selling and which products they offer.).

Arganbright does not explicitly teach a method of determining a product mix for a retail store. However, Arganbright discloses a marketing system that can be applied to a variety of industries, regardless of the intended field of use of the method.

Arganbright teaches a marketing system, though the system has utility in other

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applications (see column 78 lines 1-7). The system being adapted to product mix determining system is irrelevant since the intended use does not change the overall functionality of the system. The intended use must result in a manipulative difference as compared to the prior art. The intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Therefore, it would have been obvious, at the time of the invention, to one of ordinary skill in the art to use the Arganbright system at a product mix determining system because the Arganbright system is designed to be used in a determining products for sale, based on marketing and sales data, regardless of the intended use, thereby making having a more universal and versatile system capable of offering more solutions.

Arganbright also fails to teach:

establishing a market cutoff rate

Arganbright discloses allowing Independent Business Owners to select from a market distribution the owner wishes to sell (see column 10 lines 66-67 and column 11 lines 1-10). A market cutoff rate is a percentage of the market distribution for a particular market segment a retailer wishes to provide (see Specification page 6 lines 12-23). Thus, the market cutoff rate is a percentage of a market distribution an owner wishes to provide. This value can be determined by dividing the number of products from a market distribution an owner wishes to provide, taught by Arganbright, by the number of products in the market distribution. The advantage of calculating this value is to facilitate a user's ability to evaluate sales data. It would have been obvious, at the

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time of the invention, to represent the number of products in a market distribution an owner provides as a ratio to the total number of products in the market distribution in order to facilitate the system user's ability to evaluate sales data, which is a goal of Arganbright (see column 2 lines 1-5).

As per claim 2, Arganbright fails to teach:

the sales information database includes syndicated data.

It is old and well-known in the art to incorporate syndicated sales data to a sales information database. The advantage of using syndicated data is that syndicated data contains a vast amount of data collected from various sources. Syndicate data is good data to use as sample data in forecasting future sales for businesses. It would have been obvious, at the time of the invention, for one of ordinary skill in the art to incorporate syndicated data in to the Arganbright system in order to better forecast future sales for businesses, which is a goal of Arganbright (see column 2 lines 1-12).

As per claim 3, Arganbright teaches:

A method, as set forth in claim 1, wherein the sales information database includes consumer panel data (see column 24 lines 1-51 and column 34 lines 1-50; where retail sales are compiled and displayed to the user. Consumer panel data is any suitable data that may be from a source that compiles data purchased from retailers (see specification page 7 lines 7-9)).

As per claim 4, Arganbright teaches:

A method, as set forth in claim 1, wherein the sales information database includes planogram data (see column 24 lines 1-51 and column 34 lines 1-50; where

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the system displays the products offered by the retailer. Planogram data includes the product line a retailer sells in a particular market segment (see specification page 7 lines 12-13)).

As per claim 5, Arganbright teaches:

A method, as set forth in claim 1, wherein the sales information database includes account data associated with the retail store (see column 24 lines 1-51 and column 34 lines 1-50; where IBO users have access to a "virtual office" and can see their account information and data.).

As per claim 6, Arganbright teaches:

A method, as set forth in claim 5, wherein retail store account data includes an identifier, description data and dollar sales data (see column 24 lines 1-51, column 31 lines 30-67, and column 34 lines 1-50; where IBO users can see their account information, sales information and their status information.).

As per claim 7, Arganbright teaches:

A method, as set forth in claim 6, wherein the product identifier is a universal product code ("UPC") (see column 27 lines 6-16; where the product identifier is an SKU or an identification number. Both SKU and identification numbers can service as UPC codes.)

As per claim 8, Arganbright teaches:

A method, as set forth in claim 5, wherein the retail store account data includes all commodity volume ("ACV") weighted distribution data (see column 24 lines 1-51, column 31 lines 30-67, and column 34 lines 1-50; where IBO users can see their

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total sales and total sales for each product line. ACV information is the total volume sold by the retailer (see specification page 8 lines 1-3)).

As per claim 9, Arganbright teaches:

A method, as set forth in claim 8, wherein the ACV data includes ACV weighted distribution data (see column 24 lines 1-51, column 31 lines 30-67, and column 34 lines 1-50; where IBO users can see their total sales and total sales for each product line. Weighted distribution is the percentage of a product sold (see specification page 8 lines 1-3)).

As per claim 10. Arganbright fails to teach:

wherein the ACV data includes dollars per million ACV data.

It is old and well-known in the art to organize sales data representing a dollar of product or service per million dollars of total product sold. The advantage of this ratio is it facilitates a user determining the profitability of the product. It would have been obvious, for one of ordinary skill in the art, to organize sales data representing a dollar of product or service per million dollars of total product sold in order to facilitate the determination of profitability.

As per claim 11, Arganbright teaches:

A method, as set forth in claim 5, wherein the retail store account data includes segmentation data (see column 10 lines 54-65; where the system teaches of gaining a greater share of product markets and identifying new markets to enter in to.).

As per claim 12, Arganbright teaches:

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A method, as set forth in claim 11, wherein the segmentation data includes category data, segment data and sub-segment data (see column 10 lines 54-65; where the system teaches of gaining a greater share of product markets and identifying new markets to enter in to.).

As per claim 13, Arganbright teaches:

A method as set forth in claim 1 including the step of determining an opportunity gap as a function of the sales information database (see column 31 lines 1-23 and column 31 lines 31-53; where a gap between actual sales and needed sales is determined.).

As per claim 14, Arganbright teaches:

A method, as set forth in claim 1, including the step of producing a report including the list of suggested product mix (see column 55 lines 22-31, column 67 lines 14-65, and column 74 lines 7-38; where the system provides reporting functionality. Furthermore, questionnaires are used to dynamically generate a report of recommended products.).

As per claim 15, Arganbright fails to teach:

A method as set forth in claim 1, wherein the report is a new assortment report (see column 67 lines 14-65 and column 74 lines 7-38; where the system provides reporting functionality. The system provides reports on purchasing trends, popular deals, and order fulfillment. A new assortment report is a report that gives the retailer the information needed to optimize sales (see Specification page 9 lines 18-24). Any of the reports listed above will allow a retailer to optimize sales.).

As per claim 16, Arganbright teaches:

A method as set forth in claim 14 wherein the report is an impact report (see column 67 lines 14-65 and column 74 lines 7-38; where the system provides reporting functionality. The system provides reports on purchasing trends, popular deals, and order fulfillment. The order fulfillment report generates the same information an impact report would generate.).

As per claim 17, Arganbright teaches:

A method, as set forth in claim 14, wherein the report is a top-bottom report (see column 67 lines 14-65 and column 74 lines 7-38; where the system provides reporting functionality. The system provides reports on purchasing trends, popular deals, and order fulfillment. The system reports the most popular items and the least popular items through the popular deals and trends reports. These reports are the same as a top-bottom report, which is a report that describes the top items sold and the bottom items sold (see Specification page 10 lines 17-20).

As per claim 18, Arganbright teaches:

A method, as set forth in claim 1, including the steps of establishing data changes and producing a report as a function of the data changes and including the list of suggested product mix (see column 55 lines 22-31, column 67 lines 14-65, and column 74 lines 7-38; where the system provides reporting functionality. The reports include a product recommendation report, popular deals report, purchasing trends report, and order fulfillment reports. The popular deals report and purchasing

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trends report tracks changes in data and the product recommendation report suggests a product mix.).

As per claim 19, Arganbright teaches:

A computer-based method for producing a report for product mix for a retail store, including the steps of:

establishing a market segment (see column 10 lines 54-65; where the system teaches of gaining a greater share of product markets and identifying new markets to enter in to.);

generating a list of suggested product mix as a function of the market segment, the market cutoff rate and a sales information database (see column 32 lines 20-34 and column 55 lines 22-31; where product mixes are determined for different groups (market segments) and sales information which includes the market cut off rate. Furthermore, a report is generated for recommended products. This report is the same as generating a product mix list. The sales information will contain information on which products the IBO has been more successful in selling and which products they offer.);

determining an opportunity gap as a function of the sales information database (see column 31 lines 1-23 and column 31 lines 31-53; where a gap between actual sales and needed sales is determined.); and

producing a report including the list of suggested product mix (see column 55 lines 22-31, column 67 lines 14-65, and column 74 lines 7-38; where the system

provides reporting functionality. Furthermore, questionnaires are used to dynamically generate a report of recommended products.).

Arganbright does not explicitly teach a method of determining a product mix for a retail store. However, Arganbright discloses a marketing system that can be applied to a variety of industries, regardless of the intended field of use of the method.

Arganbright teaches a marketing system, though the system has utility in other applications (see column 78 lines 1-7). This limitation is addressed in the rejection of claim 1; therefore the same rejection applies here.

Arganbright also fails to teach “establishing a market cutoff rate”. This limitation is addressed in the rejection of claim 1; therefore the same rejection applies here.

As per claim 20, Arganbright teaches:

A method, as set forth in claim 19, wherein the report is a new assortment report (see column 67 lines 14-65 and column 74 lines 7-38; where the system provides reporting functionality. The system provides reports on purchasing trends, popular deals, and order fulfillment. A new assortment report is a report that gives the retailer the information needed to optimize sales (see Specification page 9 lines 18-24). Any of the reports listed above will allow a retailer to optimize sales.).

As per claim 21, Arganbright teaches:

A method, as set forth in claim 19, wherein the report is an impact report (see column 67 lines 14-65 and column 74 lines 7-38; where the system provides reporting functionality. The system provides reports on purchasing trends, popular

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deals, and order fulfillment. The order fulfillment report generates the same information an impact report would generate.).

As per claim 22, Arganbright teaches:

A method, as set forth in claim 19, wherein the report is a top-bottom report (see column 67 lines 14-65 and column 74 lines 7-38; where the system provides reporting functionality. The system provides reports on purchasing trends, popular deals, and order fulfillment. The system reports the most popular items and the least popular items through the popular deals and trends reports. These reports are the same as a top-bottom report, which is a report that describes the top items sold and the bottom items sold (see Specification page 10 lines 17-20).

As per claim 23, Arganbright teaches:

A method as set forth in claim 19 including the steps of establishing assortment decisions and producing a report as a function of the data changes and including the list of suggested product mix (see column 55 lines 22-31, column 67 lines 14-65, and column 74 lines 7-38; where the system provides reporting functionality. The reports include a product recommendation report, popular deals report, purchasing trends report, and order fulfillment reports. The popular deals report and purchasing trends report tracks changes in data and the product recommendation report suggests a product mix.).

As per claim 24, Arganbright teaches:

A computer-based method for determining a product mix for a retail store, including the steps of:

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establishing a market segment (see column 10 lines 54-65; where the system teaches of gaining a greater share of product markets and identifying new markets to enter in to.);

establishing a market cutoff rate (see column 10 lines 66-67 and column 11 lines 1-10; where the independent business owner can choose which products from a product distribution to sell. This number of products chosen can be expressed as a percentage or rate, market cutoff rate, per Specification page 6 lines 12-23.);

establishing a sales information database (see column 24 lines 1-51 and column 34 lines 1-50; where retail sales are compiled and displayed to the user.);

establishing market conditions (see column 67 lines 14-65 and column 74 lines 7-38; where the system provides a user with a "virtual office". The virtual office allows users to generate reports regarding popular deals (items), purchasing and market trends, and a recommended products list. Each of these reports give the users the current market conditions.);

generating worksheets as a function of the sales information database, the market segment and the market cutoff rate (see column 32 lines 20-34 and column 55 lines 22-31; where product mixes are determined for different groups (market segments) and sales information which includes the market cut off rate.

Furthermore, a report is generated for recommended products. This report is the same as generating a product mix list. The sales information will contain information on which products the IBO has been more successful in selling and which products

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they offer, which can be expressed as a percentage (see above). This report can be displayed as a worksheet.);

generating a list of suggested product mix as a function of the market segment, the market cutoff rate, the sales information database, and the marketing conditions (see column 32 lines 20-34 and column 55 lines 22-31; where product mixes are determined for different groups (market segments) and sales information which includes the market cut off rate. Furthermore, a report is generated for recommended products. This report is the same as generating a product mix list. The sales information will contain information on which products the IBO has been more successful in selling and which products they offer.);

determining an opportunity gap as a function of the sales information database (see column 31 lines 1-23 and column 31 lines 31-53; where a gap between actual sales and needed sales is determined.); and

producing a report including the list of suggested product mix (see column 55 lines 22-31, column 67 lines 14-65, and column 74 lines 7-38; where the system provides reporting functionality. Furthermore, questionnaires are used to dynamically generate a report of recommended products.).

Arganbright does not explicitly teach a method of determining a product mix for a retail store. However, Arganbright discloses a marketing system that can be applied to a variety of industries, regardless of the intended field of use of the method.

Arganbright teaches a marketing system, though the system has utility in other

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applications (see column 78 lines 1-7). This limitation is addressed in the rejection of claim 1; therefore the same rejection applies here.

Arganbright also fails to teach "establishing a market cutoff rate". This limitation is addressed in the rejection of claim 1; therefore the same rejection applies here.

As per claim 25, Arganbright teaches:

A method, as set forth in claim 24, wherein the report is a new assortment report (see column 67 lines 14-65 and column 74 lines 7-38; where the system provides reporting functionality. The system provides reports on purchasing trends, popular deals, and order fulfillment. A new assortment report is a report that gives the retailer the information needed to optimize sales (see Specification page 9 lines 18-24). Any of the reports listed above will allow a retailer to optimize sales.).

As per claim 26, Arganbright teaches:

A method, as set forth in claim 24, wherein the report is an impact report (see column 67 lines 14-65 and column 74 lines 7-38; where the system provides reporting functionality. The system provides reports on purchasing trends, popular deals, and order fulfillment. The order fulfillment report generates the same information an impact report would generate.).

As per claim 27, Arganbright teaches:

A method, as set forth in claim 24, wherein the report is a top-bottom report (see column 67 lines 14-65 and column 74 lines 7-38; where the system provides reporting functionality. The system provides reports on purchasing trends, popular deals, and order fulfillment. The system reports the most popular items and the

least popular items through the popular deals and trends reports. These reports are the same as a top-bottom report, which is a report that describes the top items sold and the bottom items sold (see Specification page 10 lines 17-20).

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following are pertinent to the current invention, though not relied upon:

Sanders (U.S. Patent No. 6411936) teaches an enterprise value enhancement system, method, and apparatus that uses an enterprise value enhancement model based on planning loop structures.

Boyd et al. (U.S. Patent No. 6963854) teaches a system and method for determining the optimal price for products considering market conditions, market segmentation, and promotional features.

Bradlow et al. (Bradlow, Eric T.; Rao, Vithala R.; "A Hierarchical Bayes Model for Assortment Choice", *Journal of Marketing Research*, May 2000, pp. 259-268) teaches a merger of a hierarchical model and a utility model to describe individual choices among assortments of multi-attributed products.

O'Brien et al. (O'Brien, Terrence V.; Schoenbachler, Denise D.; Gordon, Geoffrey L.; "Marketing Information Systems for Consumer Products Companies: A Management Overview", *Journal of Consumer Marketing*, 1995, pp. 16-36) teaches a marketing system that translates raw data in to useable data for marketing managers.

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Amaravadi et al. (Amaravadi, Chandra; Samaddar, Subhashish; Dutta, Siddartha; "Intelligent Marketing Information Systems: Computerized Intelligence for Marketing Decision Making", *Marketing Intelligence & Planning*, 1995, pp. 4-13) teaches a marketing system composing sharing knowledge between marketing managers to improve the economics and effectiveness of marketing.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kalyan K. Deshpande whose telephone number is (571) 272-5880. The examiner can normally be reached on M-F 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


SUSANNA M. DIAZ
PRIMARY EXAMINER



kkd